IN THE UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

C.A. No. 25-0682

VANDALIA ENVIRONMENTAL ALLIANCE,	)	
	)	C.A. No. 25-0682
Appellant,	)	
v.	)	
BLUESKY HYDROGEN ENTERPRISES,	)	
Appellee.	)	

Appeal from the United States District Court for the Middle District of Vandalia
in C.A. No. 24-0682

BRIEF OF APPELLEE, BLUESKY HYDROGEN ENTERPRISES

Team 5
Counsel for Appellee BlueSky Hydrogen Enterprises

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Supreme Court of the United States Cases

United States Court of Appeals Cases

United States District Court Cases

Statutes

Other Authorities

JURISDICTIONAL STATEMENT

A. District Court's Jurisdiction

The district court had subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, which grants district courts "original jurisdiction of all civil actions arising under . . ." United States law. One of the Vandalia Environmental Alliance's ("VEA") ("Plaintiff") claims against BlueSky Hydrogen Enterprises ("BlueSky") stems from 42 U.S.C. § 6972(a)(1)(B).

Where a district court has original jurisdiction in a civil action, it also has supplemental jurisdiction over claims "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy . . ." 28 U.S.C. § 1367(a). Plaintiff's claim for public nuisance originates from the same alleged conduct as its 42 U.S.C. § 6972(a)(1)(B) claim.

B. Court of Appeal's Jurisdiction

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1292(a)(1) and 28 U.S.C. § 1292(b).

C. Timeliness of Appeal

The district court granted Plaintiff's motion for a preliminary injunction on November 24, 2025. R. at 14. BlueSky filed this appeal on December 1, 2025, within the thirty-day timeline. R. at 15; Fed. R. App. P. (4)(a)(1). The district court also granted BlueSky's motion to stay its injunction on December 8, 2025. R. at 16. The district court later granted Plaintiff's timely request for an interlocutory appeal of its stay order. R. at 16; Fed. R. App. P. 5(a)(2), 4(a)(1)(A).

D. Appealable order

This appeal stems from appealable orders granting and staying an injunction. R. at 14–15.

STATEMENT OF THE ISSUES PRESENTED

I. Under *Coinbase, Inc v. Bielski*, 599 U.S. 736 (2023), did the district court correctly stay the proceedings when this Circuit has adopted the holding and reasoning of *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265 (4th Cir. 2025)?

II. Under a public nuisance claim, does the VEA lack standing when claiming "special injury" to their farm even though it admitted other farmers suffered similar injuries?

III. Whether BlueSky's air emissions of PFOA considered "disposal" under the RCRA when the statutory definition does not include "emitting," which would determine whether the VEA is likely to succeed on the merits of its RCRA claim?

IV. Whether the VEA can use harm to the general public instead of itself or its members to satisfy the irreparable harm prong under *Winter*?

STATEMENT OF THE CASE

This appeal concerns four holdings of the United States District Court for the Middle District of Vandalia; the district court: (1) granted BlueSky's motion to stay proceedings pending appeal of the preliminary injunction, (2) held the VEA has standing to bring its public nuisance claim, (3) BlueSky's emissions are "disposal" under the Resource Conservation and Recovery Act ("RCRA"), and (4) irreparable harm had occurred sufficient to issue a preliminary injunction. R. at 1–2, 14–15.

The issue in this case arises from BlueSky utilizing a new method of waste-to-hydrogen conversion in its SkyLoop Hydrogen Plant in rural Mammoth, Vandalia, an area dealing with extensive waste management issues. R. at 4. A core design and operational priority of SkyLoop is the facility's air emissions, operating in enclosed, oxygen-limited systems that are routed through downstream treatment and multiple stages of gas cleanup and emission control to

remove particulates, acid gases, and trace organics, and significantly reduce formation of air emitters. R. at 6. These advanced filtration, scrubbing, and catalytic treatment technologies are monitored in real time to ensure stable performance that meets or exceeds applicable regulatory air quality standards. *Id.* As a result, SkyLoop's greenhouse gas footprint is substantially lower than conventional hydrogen production methods, reflecting BlueSky's commitment to responsible operation. *Id.* BlueSky's SkyLoop facility supports Vandalia's environmental goals of reducing landfill waste and supplying regional industrial and energy applications, creating new jobs in the community. R. at 5. Since this process, like other waste conversion procedures, has the potential to produce air emissions, SkyLoop acquired a Title V Clean Air Act permit regarding air pollutants and has remained in compliance with its permit since beginning operations in January 2024. R. at 5–6.

The VEA is a Vandalia-based environmental public interest organization that has previously leveraged federal statutes and state tort claims to target waste conversion facilities. R. at 6. The VEA also operates an outreach center located about 5 miles south of Mammoth's urban center and 1.5 miles north of SkyLoop, to inform residents how to maintain a small farm or garden. R. at 7. All food that VEA Sustainable Farms produces is either used on site for farm-hosted events or donated to local food banks and soup kitchens. *Id.* Many other local farms grow a variety of food and raise livestock between VEA Sustainable Farms and SkyLoop. *Id.*

Originally, the VEA supported the SkyLoop facility because it would be more environmentally friendly than fossil fuels, provide the community with employment, and be less harmful than a landfill that would have otherwise occupied the space. *Id.* However, in March 2025, testing results for 2024 of Mammoth Public Service District's ("PSD") water supply revealed levels of the forever chemical PFOA of 3.9 ppt in the Mammoth water supply. *Id.* At

the time of the incident and this dispute, the U.S. Environmental Protection Agency ("EPA") has not enacted a currently enforceable Maximum Contaminant Level ("MCL") for PFOA. *Id.* The only regulation regarding permissible PFOA levels promulgated by the EPA will be unenforceable until 2029, which sets the MCL at 4.0, which is above the level revealed by the 2024 testing. *Id.* Under the EPA's Clear Air Act and SkyLoop's Title V air permit, these PFOA contamination levels are lawful. R. at 8

Nonetheless, the VEA believes that this contamination may negatively affect the community of Vandalia due to its presence in the Mammoth PSD water supply and surrounding farmland. *Id.* Through its investigation, the VEA discovered that one of SkyLoop's waste feedstocks contains PFOA from Martel Chemicals' delivery of contaminated compounds to BlueSky for treatment and that PFOA was emitted into the air and ended up in the Mammoth PSD water supply and local farmland. R. at 7–8. Out of an abundance of caution, the VEA advised members to cease drinking public water and buy bottled water, though most of Vandalia has continued drinking the Mammoth PSD water without any demonstrated effects. R. at 8. Beyond avoiding public water, the VEA also ultra-cautiously ceased providing food to community food banks and soup kitchens out of fear of potential unidentified effects. R. at 9.

After the VEA's discovery, it sent a notice of intent to sue BlueSky under the RCRA's ISE provision. R. at 11. The VEA filed suit in the United States District Court for the Middle District of Vandalia and pursued claims under public nuisance and the RCRA's citizen suit provision. R. at 11. After the VEA moved for a preliminary injunction against BlueSky to temporarily shut down SkyLoop or stop SkyLoop from using any waste that could contain PFOA, the district court held an evidentiary hearing where the VEA presented testimony regarding its members decision to purchase bottled water instead of drinking from the PSD water

supply. R. at 11, 14. The VEA also presented expert testimony reflecting that the rates of PFOA accumulation in the Mammoth PSD water to date could potentially reach as high as 10 ppt by May 2026 if SkyLoop's emissions continued. R. at 14.

The district court ultimately granted the VEA's motion for a preliminary injunction based on *Winter v. Nat. Res. Def. Council, Inc.*, 55 U.S. 7, 20 (2008); R. at 14. The district court also found that the property damage to the VEA's farm and vegetable garden qualified as a "special injury" different from the public's injuries from drinking from the PSD water supply. R. at 15. However, the district court failed to address BlueSky's argument that many other farms experienced the same injury the VEA relied on for its public nuisance claim. *Id.* The court further found that SkyLoop's air emissions constituted "disposal" under the RCRA, following *Little Hocking Water Ass'n, Inc. v. E.I. du Pont Nemours & Co.*, 91 F. Supp. 2d 940, 963-66 (S.D. Ohio 2015). R. at 15. Although the court found there was not enough evidence to show that the VEA's members are likely to suffer irreparable harm between now and trial because they ceased drinking the contaminated water, the court found that BlueSky's emissions constituted irreparable harm due to the public continuing to drink contaminated water. *Id.*

On December 1, 2025, BlueSky filed its appeal to this Court seeking to vacate the preliminary injunction. *Id.* BlueSky filed a motion to stay proceedings in the lower court pending appeal on the same day, arguing that under *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), the court must defer ruling on any issues "involved" in this appeal. *Id.* On December 8, 2025, the district court granted BlueSky's motion, finding that *Coinbase* and Twelfth Circuit precedent rendered such a stay mandatory. R. at 16.

SUMMARY OF THE ARGUMENT

This case is not about cleaning up the environment. The question here is more fundamental: whether courts should effectuate Congress's will. When Congress has spent many hours debating, striking, and editing legislation, courts should interpret laws at face value.

For the following reasons, the district court correctly stayed the proceedings pending appeal. However, the district court incorrectly determined that the VEA had standing under its public nuisance claim, that "disposal" under the RCRA included BlueSky's air emissions and therefore the VEA was likely to succeed on its merits, and that the VEA could use public harm for the irreparable harm prong under *Winter*.

First, the district court correctly stayed the proceedings pending appeal. This Court has expanded Supreme Court precedent of automatic stays by adopting the reasoning and holding in *City of Martinsville*, 128 F.4th at 265. Thus, district courts are required to automatically stay aspects of proceedings that are part of the appeal. The aspects of this appeal are essentially the entire case. Efforts by both parties would be wasted if this Court finds the VEA lacks standing for its public nuisance claim or if BlueSky's emissions are not "disposal" under the RCRA.

Second, the VEA in fact lacks standing to bring its public nuisance claim because it cannot show "special injury." The Restatement (Second) of Torts defines "special injury" as a "different kind" of injury from that suffered by the general public; it is not enough to show the same kind of harm but to a "greater extent or degree." § 821C cmt. b (Am. Law Inst. 1979). The VEA lacks a "special injury" because the harm it has experienced is not a "different kind" than the harm experienced by the general public. Even if this Court considers the PFOA contamination levels injurious, the VEA cannot show how its injury is any different than the general public's. Additionally, the VEA admits that "its concerns are not unique to its own land"

and that the injury to its farmland would "likely be shared broadly across the agricultural community." R. at 9. Accordingly, the VEA lacks a "special injury" that is of a "different kind."

Third, BlueSky's air emissions of PFOA are not "disposal" under the RCRA. The district court incorrectly determined that the VEA was likely to succeed on the merits of its RCRA ISE claim for four reasons. First, the RCRA's text does not include emitting within conduct constituting "disposal." 42 U.S.C. § 6903(3). Second, conduct must result in solid waste or hazardous waste being placed in or on land or water, and then later enter the environment, be emitted into the air, discharged into any waters. *Ctr. for Cmty. Action & Env't Just. v. BNSF R. Co.*, 764 F.3d 1019, 1024 (9th Cir. 2014). Third, the statutory scheme and legislative history support this conclusion. *Id*. Fourth, there is no "loophole" where PFOA air emissions will be unregulated, as the EPA has finalized rules on that subject. 40 C.F.R. pt. 141, 142 (2024). Regulation of emissions are simply unenforceable through private litigation. *Id*.

Lastly, only the VEA's harm can be used for the irreparable harm prong under *Winter* for three reasons. First, *Winter* and its progeny have consistently held the plaintiff's harm is what is considered under the irreparable harm prong. *Winter*, 555 U.S. at 20. Second, harm to the public is properly considered under the public interest prong. *See Cassell v. Snyders*, 990 F.3d 539, 545 (7th Cir. 2021) (quoting *Abott Labs v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992)). Third, Plaintiff's third-party standing created from its members does not equate to it being able to use the public harm to assert irreparable injury to get an injunction.

In short, this Court should affirm the district court's stay pending this appeal. However, this Court should dismiss the VEA's public nuisance claim, reverse the lower court's holding that BlueSky's air emissions are "disposal" under the RCRA and therefore find the VEA unlikely

to succeed on the merits of its RCRA ISE claim, and reverse the district court's holding that the VEA could use the general public's harm under *Winte*r.

ARGUMENT

I. Supreme Court precedent required an automatic stay in this case.

Supreme Court precedent required an automatic stay in this case. The district court's interpretation of *Coinbase* is reviewed de novo. *Benisek v. Lamone*, 585 U.S. 155, 158 (2018). As the Court stated in *Coinbase*, "[t]he filing of a notice of appeal confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal." 599 U.S. at 740 (quoting *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985)). The holding invokes the *Griggs* principle, which states that an appeal, including an interlocutory appeal, is a significant "jurisdictional event" that confers jurisdiction onto the court of appeals. *Id.* at 740 (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)). As an established tenet, *Griggs* is the default in appeals. So much so, that when Congress wants to authorize an interlocutory appeal, but not an automatic stay, Congress explicitly says that an automatic stay is inapplicable. *See Coinbase, Inc.*, 599 U.S. at 744. Furthermore, *Griggs* promotes judicial efficiency and reduces confusion: dual jurisdiction would waste precious time, effort, and money for parties and courts if litigation continued despite the possibility an appellate decision might render all such efforts futile.

a. Interlocutory appeals on motions granting preliminary injunctions invoke automatic stays.

Interlocutory appeals for preliminary injunctions invoke automatic stays. *Coinbase* has been expanded by other circuits via interlocutory appeals regarding remand orders. Specifically, this circuit adopted the reasoning and holding in *City of Martinsville, Virginia v. Express Scripts, Inc.*, where the Fourth Circuit held that the district court could not mail remand orders to state

court because the notice of appeal suspended the district court's power to act. 128 F.4th at 268. The Fourth Circuit reasoned that *Griggs* is a background principle, it applies even without Congress saying so. *Id.* at 270. Thus, "at least absent contrary indications, the background *Griggs* principle already requires an automatic stay." *Id.* The court found nothing in 28 U.S.C. § 1447(d), the removal statute, that overrode the *Griggs* principle. *Id.* Since nothing overrode the *Griggs* principle, an automatic stay is required regarding aspects of the case on appeal. *Id.*

In this case, interlocutory appeals of motions granting preliminary injunctions invoke automatic stays. Like the removal statute in *Express Scripts*, 28 U.S.C § 1292(a)(1)—the statute governing interlocutory decisions—suggests nothing overriding the *Griggs* principle. Since *Griggs* recognizes a "background principle," the district court was correct in holding that it was required to automatically stay proceedings that were aspects of the appeal.

i. Arguments to the contrary are unpersuasive.

Suggesting that automatic stays on motions granting preliminary injunctions would "upend federal litigation as we know it" is unpersuasive. *See Coinbase, Inc.*, 599 U.S. at 760 (Jackson, J., dissenting). As the majority in *Coinbase* explained, the *Griggs* principle is unlikely to encourage frivolous appeals because district courts have a wide array of tools to prevent unwarranted delay and deter frivolous appeals. *Id.* at 745. Moreover, district courts can label appeals as frivolous while maintaining jurisdiction to continue proceedings. *Id.* Concerns about litigants stalling cases are therefore unwarranted because frivolous appeals can be separated from legitimate ones. Thus, only appeals truly concerning whether litigation proceedings should continue at all would be stayed. With this discretion and the ability to issue sanctions, district courts can deter parties attempting to exploit the *Griggs* principle.

Coinbase is not strictly limited to motions to compel arbitration. As the Supreme Court notes, *Coinbase* applied the *Griggs* principle that courts already apply in "analogous contexts where an interlocutory appeal is authorized, including qualified immunity and double jeopardy." *Id.* at 746. The Court went out of its way to recognize and approve other instances where courts imposed automatic stays pending appeal. Thus, the Court reinforced that the *Griggs* is not a one-off for arbitration and should be used in analogous situations like preliminary injunctions.

b. The aspects on appeal are essentially the entire case.

Here, the aspects on appeal are essentially the entire case. In *Coinbase*, the Court found that the result of the interlocutory appeal of a denied motion to compel arbitration is dispositive in deciding whether litigation should continue. 599 U.S. at 741. As a result, it would "make no sense" to continue litigation while the court of appeals is considering whether litigation will continue at all. *Id.* (quoting *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989)). Thus, an appeal considering a motion to compel arbitration involved "essentially" the entire case and all proceedings needed to be stayed. *Coinbase, Inc.*, 599 U.S. at 741. The Court carved out an exception for motions for attorneys' fees and costs which were not aspects of the case on appeal and therefore did not need to be stayed. *Id.*

Defending a lawsuit when an appeal could render many of the theories of the case moot is unjust, inefficient, and prejudicial. *Am. Encore v. Fontes*, No. V-24-01673-PHX-MTL, 2025 WL 1839464, at *2 (D. Ariz. June 26, 2025). The court in *Fontes*, pending an appeal of a preliminary injunction, held the defendant's motion to stay should be granted in part because of the *Griggs* principle. *Id.* at *3. The district court reasoned that most of the substantive issues, including whether the plaintiff had standing under Arizona's election laws, were implicated by the

interlocutory appeal; by staying the case, the court could promote efficiency and limit confusion with inconsistent decisions. *Id.* at *2.

When certain facts underlying arguments on appeal materially change, the district court may continue proceedings because the aspects of the case involved in the appeal are distinguishable. *Brown v. Taylor*, No. 222CV09203MEMFKS, 2024 WL 1600314, at *3 (C.D. Cal. Apr. 3, 2024). In *Brown*, the court did not grant the motion to stay because the defendant's new concession offered after appeal would change the parties' underlying legal arguments. *Id.* at *4. The defendant in *Brown* conceded that the zoning ordinance prevented *any* improvements to the property, not just a solar farm, which would change the parties' takings analysis. *Id.* at *3. Since the crux of the defendant's argument was that restricting solar farms was not a taking under the Fifth Amendment, the motion of summary judgment would be unaffected by the Ninth Circuit's ruling on the preliminary injunction. *Id.*

In this case, Supreme Court precedent requires the district court to stay proceedings because the aspects of the proceedings on appeal effectively form the entire case. On appeal, BlueSky is challenging whether the preliminary injunction should have been granted. R. at 15. Within that appeal, this Court will determine whether the VEA has standing to bring its public nuisance claim, whether the VEA is likely to succeed on the merits of its RCRA claim, and whether the VEA sustained irreparable harm. *Id.* If this Court determines that the VEA does not have standing to bring its public nuisance claim, that legal theory should be dismissed because a private citizen or non-governmental entity must show standing through "special injury" to bring a public nuisance claim. Thus, if the district court were to continue proceedings on public nuisance and this Court were to hold the VEA has no standing, concurrent proceedings would waste significant time, energy, and money from all entities involved.

Whether the VEA can bring its public nuisance claim mirrors arbitrability in *Coinbase*. In *Coinbase*, the Court stated that the issue of arbitrability singularly determined whether litigation would continue. *Coinbase, Inc.*, 599 U.S. at 743. Here, the issue of standing will similarly determine whether litigation continues at all. Standing serves similar purposes to arbitrability in that it allows parties to avoid costly litigation. Standing saves parties by preventing assertions of frivolous and harassing suits through an initial threshold question. Thus, as the *Coinbase* Court noted, many of the benefits of arbitration and, similarly, standing would be lost if district courts continued proceedings while those aspects of the case were on appeal. *Id.* at 741.

Additionally, the issue of irreparable harm is essentially the entire case at issue under the RCRA. The VEA is seeking injunctive relief to stop BlueSky's emissions or, alternatively, prevent BlueSky from accepting and using any waste that could contain PFOA as feedstock. R. at 11. The VEA's failure to establish irreparable harm prevents the VEA from receiving injunctive relief. R. at 14. The *Griggs* principle intentionally covers these exact scenarios—rather than inviting two cooks into the kitchen, the appellate court divests the district court of its jurisdiction and proceedings in the lower court are stayed during the appeal. This distinction prevents two courts from resolving the same issue at the same time in contradictory manners.

Requiring BlueSky to defend a lawsuit when the appeal could invalidate many of the core theories of the case is unjust, inefficient, and prejudicial. *See Am. Encore v. Fontes*, 2025 WL 1839464 at *2. Similarly, the preliminary injunction involves many of the same legal arguments in both courts. By staying proceedings, the district court prevents potentially inconsistent decisions. Because this case does not involve changing facts or evolving legal arguments, it does not warrant continuing proceedings like in *Brown.* 2024 WL 1600314 at *3.

Since standing and irreparable harm are essentially the entire case on appeal, the district court was correct in staying the proceedings. This Court should affirm the district court's decision to stay proceedings pending this appeal in the interests of judicial economy and consistency with precedent adopted by this Court.

II. The VEA cannot bring a public nuisance claim because it lacks a special injury.

The VEA has failed to establish that it has experienced a special injury resulting from BlueSky's PFOA air emissions distinct from the general public. Therefore, the VEA lacks standing to bring its public nuisance claim.

The Supreme Court held that private entities may only bring a public nuisance claim if they have established a "special injury" that differentiates their individual injury from the rest of the general public. *Ariz. Copper Co. v. Gillespie*, 230 U.S. 46, 57 (1913). Vandalia has generally adopted the Restatement (Second) of Torts definition of "special injury." R. at 9. The Restatement defines "special injury" as harm that is "of a kind different from that suffered by other members of the public exercising the right common to the general public that was the subject of interference." Restatement (Second) of Torts § 821C(1) (Am. Law Inst. 1979).

The Restatement has further indicated that "[i]t is not enough that [a private individual] suffered the same kind of harm or interference but to a greater extent or degree" alone. Restatement (Second) of Torts § 821C cmt. b. (Am. Law Inst. 1979). Several circuits have further held that mere difference "*in degree* from the community at large" is insufficient; in order constitute a "special injury" for establishing private standing, the private entity must prove that its harm is "different *in kind*." *See Palmer v. Amazon.com, Inc.*, 51 F.4th 491, 499 (2d Cir. 2022) (emphasis in original); *see also Ileto v. Glock Inc.*, 349 F.3d 1191, 1211 (9th Cir. 2003); *Allegheny Gen. Hosp. v. Philip Morris, Inc.*, 228 F.3d 429, 446 (3d Cir. 2000) (finding that

injury must be *both* "of greater magnitude and of a different kind than that which the general public suffered").

a. Although difference in degree of harm might imply difference in kind, the VEA did not experience harm that was any greater than the rest of Vandalia.

While difference in degree is insufficient for private standing, the Restatement suggests that courts may consider difference in degree as evidentiary support when deciding whether an injury is actually different in kind. Restatement (Second) of Torts § 821C cmt. c. (Am. Law Inst. 1979). For example, the Restatement illustrates that while road blockage may constitute a public nuisance common to the general road-using public, a plaintiff who "traverses the road a dozen times a day . . . nearly always has some special reason to do so, and that reason will almost invariably be based upon some special interest of his own, not common to the community." *Id.* Thus, while everyone in the public is inconvenienced by the same road blockage, the plaintiff in this example is burdened to such an extraordinary degree such that a court would be more likely to find his injury is different in kind. Such a plaintiff may experience "[s]ignificant interference with that interest" sufficient to constitute "particular damage" in supporting private standing in tort with respect to a public nuisance claim. *Id.*

However, several circuits have been hesitant to extend such reasoning to expand private standing for public nuisance claims. Certain courts have suggested that whether an injury is different in kind remains a distinct inquiry from whether an injury is different in degree. *Palmer*, 51 F.4th at 513–14 (denying to "go so far as to hold that the degree of a plaintiff's harm plays a part in determining whether the harm is different in kind."); *see also In re Exxon Valdez*, 104 F.3d 1196, 1198 (9th Cir. 1997) (finding that an injury that is different in degree or affects certain individuals "more severely than other members of the public" does not reflect that the injury was different in kind).

In this case, the VEA's injury is no different in degree than similarly situated members of the general public. At the time of Mammoth PSD's water supply's contamination, there was no legally recognizable standard for maximum PFOA contamination. R. at 7. While the U.S. EPA's new MCL regulations are unenforceable until 2029, BlueSky's PFOA levels still fall below the regulated limit. *Id*. The MCL regulations indicate that PFOA levels within the designated range are lawful and further illustrate that emissions falling within such range are not, in fact, injurious at all. Such injury would not be impermissible even under the 2029 standards. *Id*.

The VEA has failed to illustrate how its injury resulting from water contamination is any different from members of the public. While members of the VEA have resorted to buying bottled water, their injury is the deprivation of access to PFOA-free public water, a burden shared by Vandalia residents. R. at 8–9. Additionally, while the VEA has ceased operations regarding its farming operations as a result of the contamination of its farmland, so, too, have the rest of the general public of Vandalia been unable to continue farming activities without PFOA contamination in their lands. Since the VEA's injury is neither different in kind nor degree, the VEA lacks special injury to assert standing in bringing its public nuisance claim.

b. The VEA did not experience business or pecuniary loss sufficient to establish special injury.

When determining whether special injury exists that is different in kind from the general public, some courts have considered whether a business entity has experienced pecuniary loss. In particular, the Restatement has stated that "[p]ecuinary loss to the plaintiff resulting from the public nuisance is normally a different kind of harm from that suffered by the general public." Restatement (Second) of Torts § 821C cmt. h (Am. Law Inst. 1979). For example, in *Philadelphia Elec. Co. v. Hercules, Inc.*, the Third Circuit found that lack of evidence that the plaintiffs ever used a public river meant that case was not one "where an established business

made commercial use of the public right with which the defendant interfered." 762 F.2d 303, 316 (3d Cir. 1985) (citing William Prosser, *Private Action for Public Nuisance*, 52 Va. L. Rev. 997, 1013-14 (1966)). The Ninth Circuit has held that commercial fisheries making a localized use of public waters *may* have private standing under public nuisance "where the ordinary citizen deprived of his occasional Sunday piscatorial pleasure could not do so." *Oppen v. Aetna Ins. Co.*, 485 F.2d 252, 260 (9th Cir. 1973). The court held that the plaintiffs' deprivation of their "occasional Sunday piscatorial pleasure" was insufficient to establish private standing because those plaintiffs did not experience a loss in business but rather the deprivation of a mere hobby or pastime. *Id.*

Here, the VEA has experienced no business loss because of PFOA contamination. Any money the VEA has lost from the PFOA emissions has been through voluntary abstinence from using the public source of water, advising members to purchase water bottles instead. R. at 8. The VEA has not established a commercial use of the public water supply, and loss of access to such a public resource does not specially harm the VEA or any of its potential business interests.

The same reasoning applies to the contamination of the VEA's farmland—the VEA cannot show any cognizable injury unique to it that interferes with its commercial operations separately from Vandalia's public. The VEA itself "admits that its concerns are not unique to its own land," and that numerous similarly situated farmers are equally harmed by SkyLoop's emissions. R. at 9. Even if some residents are harmed to a greater degree because of their particular use of their land, that kind of harm—diminution of soil quality—experienced by residents is consistent across the community. While Prosser suggested some commercial loss by a particular plaintiff may constitute sufficient special injury to establish standing for a public nuisance claim, the VEA's injury here is more like the deprivation of a fisherman's "occasional

Sunday Pictorial pleasure." *See Oppen*, 485 F.2d at 260. The VEA's farmland was used as a hobbyist educational source, donating a small amount of food to local food banks and soup kitchens. R. at 7. There was no pecuniary loss, no commercial interruption, and no commercial demise. The VEA's abundance of fear regarding PFOA crop contamination simply renders the VEA's extracurricular and charitable purpose less impactful in the same way the fishermen in *Oppen* were unable to engage in their traditional pastime pleasures.

c. The VEA's injury merely relates to cultural activities, which is not sufficient to give rise to private special injury, and is the same as the general public.

In deciding whether a private plaintiff's injury is different in kind from the general public, some courts consider the community at large. For example, the Third Circuit held that the proper inquiry is whether the harm in kind is "shared by all community members including nonresidents such as visitors and commuters," such as the harm caused by air pollutants. *Baptiste v. Bethlehem Landfill Co.*, 965 F.3d 214, 222 (3d Cir. 2020).

Likewise, the Ninth Circuit held that when evaluating whether a particular subset of Alaskan Natives who traditionally depended on fishing had experienced a special injury resulting from an oil spill, the court found that "cultural damage" or damage to an entity's "subsistence way of life" alone is non-compensable. *In re Exxon Valdez*, 104 F.3d at 1198. Although the class of plaintiffs in *In re Exxon Valdez* were particularly "dependent upon the preservation of uncontaminated natural resources" relative to its "social, cultural, communal and religious form of daily living," because "the right to obtain and share wild food, enjoy uncontaminated nature, and cultivate traditional, cultural, spiritual, and psychological benefits in pristine natural surroundings is shared by all Alaskans," there was no special injury. *Id.* at 1197–98.

The VEA members' inability to consume local drinking water may constitute damage to their subsistence ways of living, but just as the Ninth Circuit held in *In re Exxon Valdez*, such

cultural intangible injury is non-compensable when the injury is common to the rest of the community and lacks any actual business or pecuniary loss. The VEA's tradition of cultivating food and educating the community does not reflect any legally recognizable special injury sufficient to give it private standing for a public nuisance claim regarding a harm generally affecting all of Vandalia, especially because the VEA itself has incurred no economic harm as a result of BlueSky's emissions.

d. The VEA's arguments that the VEA has experienced a special injury are inadequate to establish private standing.

Some courts have, in fact, recognized that certain private injuries resulting from general public nuisance causes might sufficiently establish standing. For example, in *Benoit v. Saint-Gobain Performance Plastics Corp.*, the Second Circuit found that plaintiffs facing particularly unusual circumstances regarding PFOA contamination of a public water supply plausibly had private standing for a public nuisance claim. 959 F.3d 491, 495–96, 509 (2d Cir. 2020). In *Benoit*, the court found that even though the defendant's PFOA contamination affected the entire village, the plaintiffs' private wells that would require "point-of-entry treatment systems installed on their property that would need to remain in place for the foreseeable future and would require regular maintenance." *Id.* This form of remediation differed from 95% of the village residents who received water from public wells, where remediation could be performed remotely, without personal inconvenience or effort. *Id.* Additionally, in *Ileto v. Glock Inc.*, physical and mental trauma resulting from gunshot wounds were treated differently in kind from the general public's "danger, fear, inconvenience, and interference with the use and enjoyment of public places" as a result of unreasonable distribution of dangerous firearms. 349 F.3d 1191, 1212 (9th Cir. 2003).

However, this case is unlike those where the court found private standing relative to a public nuisance claim because the VEA did not lose anything of special value relative to the rest

of the Vandalia community. Unlike *Benoit*, where plaintiffs experienced special damage unlike 95% of their community, the VEA is experiencing the same harm as the rest of Vandalia—loss of clean drinking water and farmland. The mere "danger, fear, inconvenience, and interference with the use and enjoyment of public" resources do not amount to special injury like commercial or personal injury directed towards particular subsets of individuals, specially hampered unlike the rest of the community. *See Ileto*, 349 F.3d at 1212.

Additionally, the Restatement encourages particular cautiousness when inviting private action with respect to public nuisance claims. Restatement (Second) of Torts § 821C cmt. b (Am. Law Inst. 1979). Courts often avoid granting standing to private entities experiencing only a greater degree of injury because it would be difficult or impossible to draw "any satisfactory line for each public nuisance at some point in the varying gradations of degree." *Id.* Additionally, courts have found that "invasions of rights common to all of the public should be left to be remedied by action by public officials" rather than private entities in order to avoid multiplicity. *Id.*; *see also Allegheny Gen. Hosp.*, 228 F.3d at 446.

Here, the same rationale applies to the VEA's standing regarding BlueSky's PFOA emissions. As explained above, the VEA's injury is no different in kind than surrounding farms and private landowners. R. at 9. If anything, the harm might only be greater in magnitude. Should this Court accept that the VEA experienced a "special injury" sufficient to give it standing to bring this public nuisance claim, where would the Court draw the line with respect to a private entity's degree of harm? The VEA's farmland is 1.5 miles north of SkyLoop; does this distance mean that any farmland closer to SkyLoop also has a "special injury" sufficient to give them standing as well? What about farmland further from the plant but experiences similar PFOA contamination? These questions are all matters of *degree* of harm, as the *kind* of harm is

the same for all Vandalia residents: contamination of farmland and shared water supply. The Court should not try to draw lines differentiating some farmland as sufficiently specially injured compared to others that experienced the kind of injury to the same extent.

This Court has the authority to review standing at any point in litigation as a mixed question of law and fact that is reviewed de novo. *Kreisler v. Second Ave. Diner Corp.*, 731 F.3d 184, 187 n. 3 (2d Cir. 2013); *see also Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 256 (1994) ("Standing represents a jurisdictional requirement which remains open to review at all stages of the litigation."). Thus, the VEA cannot bring a public nuisance claim because it lacks special injury, and this Court should dismiss its public nuisance claim for lack of standing.

III. BlueSky's air emissions of PFOA are not "disposal" under the RCRA and the VEA is unlikely to succeed on the merits of its RCRA ISE claim.

BlueSky's air emissions are not "disposal" under the RCRA. The text, statutory scheme, and legislative history evidence Congress's intent that air emissions like BlueSky's do not fall within the reach of the RCRA's ISE provision. Accordingly, the district court abused its discretion when it determined the VEA was likely to succeed on the merits of its ISE claim.

The test for granting preliminary injunctions was outlined in *Winter v. Nat. Res. Def. Council, Inc.* 555 U.S. 7, 20 (2008). In *Winter*, the Supreme Court held:

> A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

Id.

A preliminary injunction is an extraordinary and drastic remedy and not meant to be granted as a matter of course. *Munaf v. Green*, 553 U.S. 674, 690 (2008). While the decision to grant one is reviewed for abuse of discretion, a district court's legal conclusions are still

reviewed de novo. *Benisek*, 585 U.S. at 158; *Escamilla v. M2 Tech., Inc.*, 581 F. App'x. 449, 450 (5th Cir. 2014); *Broadcom Corp. v. Magicomm, Inc.*, 127 F. App'x 991, at **1 (9th Cir. 2005).

A district court generally abuses its discretion when its decision "is asserted to be grossly unsound, unreasonable, illegal, or unsupported by the evidence." *Abuse of Discretion*, BLACK'S LAW DICTIONARY (12th ed. 2024). Other circuits use similar definitions. *See Dean v. Motel 6 Operating L.P.*, 134 F.3d 1269, 1276 (6th Cir. 1998) (citing *Bowling v. Pfizer, Inc.*, 102 F.3d 777, 780 (6th Cir. 1996))); *Waetzig v. Halliburton Energy Servs., Inc.*, 145 F.4th 1279, 1282 (10th Cir. 2025); *United States v. Ghailani*, 733 F.3d 29, 44 (2d Cir. 2013).

In the preliminary injunction context, a district court abuses its discretion when it applies "an incorrect preliminary injunction standard, rest[ed] its decision on a clearly erroneous finding of a material fact, or misapprehend[ed] the law with respect to underlying issues in litigation." *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 188 (4th Cir. 2014) (quoting *Quince Orchard Valley*, 872 F.2d, 75, 78 (4th Cir. 1989)). Making an error of law—including applying an incorrect legal definition or standard—is by definition an abuse of discretion. *Koon v. United States*, 518 U.S. 81, 100 (1996); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990), superseded on other grounds by statute.

BlueSky's air emissions do not fall within the correct definition of "disposal" under the RCRA. Because the district court incorrectly defined "disposal," it abused its discretion. R. at 15. The preliminary injunction should be reversed.

a. The RCRA's own language does not include emitting within the conduct constituting "disposal."

We begin with the text of the statute. *Republic of Sudan v. Harrison*, 587 U.S. 1, 9 (2019) (quoting *Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S*, 566 U.S. 399, 412 (2012)). The RCRA defines "disposal" as:

> [T]he discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

42 U.S.C. § 6903(3). "Emitting" is not included within the seven verbs comprising the definition of disposal. *Id*. While disposal's plain meaning might have included "emitting" when the RCRA was enacted, that plain meaning becomes irrelevant once Congress creates its own definition. *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 59 (2024) ("When Congress takes the trouble to define the terms it uses, a court must respect its definitions as 'virtually conclusive.'"). Additionally, courts adopt definitions that "'give effect, if possible, to every clause and word of a statute.'" *See Williams v. Taylor*, 529 U.S. 362, 404 (2000) (quoting *United States v. Menasche*, 348 U.S. 528, 538–39 (1955)).

When Congress includes some words within a definition but not others, it evidences the term was purposefully excluded. *Esteras v. United States*, 606 U.S. 185, 195 (2025) (quoting *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 80 (2002)) (applying the *expressio unius est exclusio alterius* canon). "The force of any negative implication, however, depends on context . . . [and the canon] does not apply 'unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it.'" *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 381 (2013) (quoting *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003)).

For example, in *Ctr. for Cmty. Action & Env't Just.*, the Ninth Circuit held the RCRA's definition for disposal did not include diesel particulate matter emissions in part because the actions constituting "disposal" did not include "emitting." *Ctr. for Cmty. Action & Env't Just.*, 764 F.3d at 1024. The court further noted "disposal" does not include "emitting" because the text is limited to "particular conduct causing a particular result." *Id*. "Disposal" would only include conduct resulting in placing solid waste "into or on any land or water," that afterwards "enter[s]

the environment *or be emitted* into the air or discharged into any waters . . .” *Id*.; 42 U.S.C. § 6903(3) (emphasis added).

The text of § 6903(3) by itself provides two reasons BlueSky’s air emissions do not constitute “disposal.” First, like the diesel particulate matter in *Ctr. for Cmty. Action & Env’t Just*., BlueSky’s air emissions do not fall within the seven verbs constituting “disposal.” R. at 15. Had Congress intended to include air emissions, it would have explicitly done so. The fact that “emitted” appears later in the definition further evidences Congress’s intent, reflecting Congress was aware of the term but declined to include it within the list of conduct. Additionally, Congress granted the EPA ability to regulate air emissions under the RCRA, without providing for private enforcement of those regulations. 42 U.S.C. § 6972(a)(1)(B); 42 U.S.C. § 6924(n).

Second, the order-of-operations outlined in *Ctr. for Cmty. Action & Env’t Just*. further highlights how air emissions were not meant to be included within the definition. Had Congress intended for air emissions to fall within the definition of “disposal,” it simply could have included “emitting” within the list of verbs. Instead, it required solid waste be placed into or on land or water, and *then* enter the environment, be emitted into the air, or discharged into any waters. *See* 42 U.S.C. § 6903(3). Including air emissions within the definition of “disposal” would render parts of the definition superfluous. Like the diesel particulate matter in *Ctr. for Cmty. Action & Env’t Just*., BlueSky’s air emissions are emitted into the air and *then* land on the ground or water, thus falling outside the definition of “disposal.” R. at 8.

The RCRA’s text standing alone shows BlueSky’s emissions are not “disposal.” Because the district court incorrectly defined “disposal” to find that BlueSky’s air emissions fell within the RCRA’s ISE provision, it abused its discretion. Accordingly, the preliminary injunction should be reversed.

b. The RCRA's legislative history further illustrates "disposal" does not include air emissions.

To the extent the Court wishes to consult the RCRA's legislative history, it further evidences Congress's intent that the term "disposal" does not include air emissions under the RCRA. The RCRA's purpose was to combat "unregulated *land disposal* . . ." H.R.Rep. No. 94–1491, at 4 (1976), 1977 U.S.C.C.A.N. 1077 (Conf. Rep.) (emphasis added). The RCRA's legislative history also supports the Ninth Circuit's holding that the statute requires land or water disposal first, followed by emission. *Id* ("The existing methods of land disposal often result in air pollution . . ."); *Ctr. for Cmty. Action & Env't Just*, 764 F.3d at 1024. Overall, the RCRA's legislative history reinforces the conclusion that air emissions like BlueSky's were never intended to fall within the meaning of "disposal." The district court abused its discretion, and its preliminary injunction must be reversed.

c. The VEA is unlikely to succeed on the merits of its RCRA ISE claim.

The VEA is unlikely to succeed on the merits of its RCRA ISE claim, and the preliminary injunction should be reversed. The likelihood of success on the merits prong of *Winter* is widely considered one of the most important factors—if not the singularly most important—of the four. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *see also United States v. Abbott*, 110 F.4th 700, 719 (5th Cir. 2024). The Ninth Circuit has gone so far as to treat the likelihood of success on the merits as a threshold inquiry. *Disney Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) ("if a movant fails to meet this 'threshold inquiry,' the court need not consider the other factors . . ."). When determining likelihood of success on the merits, the movant must show more than a mere possibility of relief. *Nken*, 556 U.S. at 434.

Here, the VEA cannot show more than a mere possibility of relief. Its RCRA ISE claim rests entirely on an improper definition for "disposal." *See* R. at 13–15. Without an erroneous

definition, Plaintiff cannot hope to succeed in its claim that BlueSky "dispos[ed] of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment . . ." 42 U.S.C. § 6972(a)(1)(B). Arguments to the contrary are without merit.

d. Arguments to the contrary are unpersuasive.

The district court below relied on the reasoning in *Little Hocking Water Ass'n, Inc.* when it determined Plaintiff was likely to succeed on the merits of its RCRA ISE claim. R. at 15; 91 F. Supp.3d at 963–66. In *Little Hocking*, the district court held the defendant's air emissions constituted "disposal" under the RCRA. 91 F. Supp.3d at 965. The district court concluded that the RCRA's purpose included these types of emissions and that holding otherwise would create a loophole in the statutory scheme. *Id*. at 965–66. The district court also held the RCRA was a remedial statute entitled to liberal construction, and that the order-of-operations interpretation was incorrect. *Id*.

The RCRA's liberal construction cannot go so far as to include BluSky's air emissions within the definition of "disposal." Remedial statutes enjoy liberal construction, but that construction must be "grounded in the statute's text and structure." *CTS Corp. v. Waldburger*, 573 U.S. 1, 12 (2014) ("[A]lmost every statute might be described as remedial in the sense that all statutes are designed to remedy some problem."). Additionally, a remedial statute will not pursue its remedial purpose "at all costs." *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 89 (2018) (quoting *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228, 234 (2013)).

Here, the RCRA would be entitled to liberal construction, but that construction must still be based on its text and structure. Since the statute does not include "emitting" within the many verbs Congress chose for "disposal," air emissions do not qualify as "disposal." When the statute includes language specifying when certain conduct becomes "disposal," the definition cannot

extend so far as to render the language superfluous. The RCRA's liberal construction cannot include BlueSky's air emissions within its definition of "disposal."

To the extent there is any "loophole" where only certain kinds of conduct fall into the RCRA's ISE provision—and certain types are unenforceable through private litigation—the solution would be for the EPA to create regulations targeting PFOAs, not expand the RCRA's definition of "disposal" beyond its purposefully limited scope. *See Ctr. for Cmty. Action & Env't Just*, 764 F.3d at 1028 (citing S.Rep. No. 98-284, at 63 (1983)).

The EPA is already acting on this front to combat emissions through other regulation. For example, the EPA established a MCL of 4.0 parts per trillion ("ppt") for PFOA. 40 C.F.R. pt. 141, 142 (2024). Although the MCL provision is unenforceable until 2029, Mammoth PSD's PFOA levels are already beneath the MCL. *Id.*; R. at 7. Plaintiff's expert's statements opining the PSD's PFOA levels could reach as high as 10 ppt are irrelevant speculation. R. at 14. Accordingly, the air emissions in question are in the process of being regulated—just not by the RCRA's ISE provision. Plaintiff cannot exploit any "gap" in the statutory scheme to shoehorn BlueSky's air emissions within the definition of "disposal."

BlueSky's air emissions do not constitute "disposal" under the RCRA. Plaintiff is unlikely to succeed on the merits of its RCRA ISE claim. The preliminary injunction granted by the district court should be reversed.

IV. Only Plaintiff's harm can serve as evidence of irreparable harm sufficient to issue a preliminary injunction.

The irreparable harm prong in *Winter* does not include harm to the public, and Plaintiff cannot satisfy its burden alleging harm suffered only by its members. When a plaintiff seeks a preliminary injunction, he must establish "that *he* is likely to suffer irreparable harm in the absence of preliminary relief . . ." *Winter*, 555 U.S. at 20 (emphasis added). More instructively,

the Court stated that without a preliminary injunction the "*applicant* must demonstrate [that] 'the *applicant* is likely to suffer irreparable harm . . .'" *Id*. at 22 (quoting 11A C. Wright, A. Miller, & M. Kane, Fed. Prac. & Proc. Civ. § 2948.1 (2d ed. 1995)) (emphasis added). By its own terms, *Winter* only considers the movant's harm. Other circuits similarly concluded. *See D.T. v. Sumner Cnty. Schs.*, 942 F.3d 324, 327 (6th Cir. 2019) ("[I]f the plaintiff isn't facing imminent and irreparable injury, there's no need to grant relief [now] as opposed to at the end of the lawsuit); *Greater Philadelphia Chamber of Com. v. Philadelphia*, 949 F.3d 116, 133 (3d Cir. 2020).

Additionally, a plaintiff's harm must be irreparable. *Loveridge v. Pendleton Woolen Mills, Inc.*, 788 F.2d 914, 917 (2d Cir. 1986). However, if a plaintiff could be compensated for the harm he would suffer during litigation—the harm contemplated when granting preliminary injunctions—with money damages, his harm is not irreparable because he could be made whole if prevailed at trial. *D.U. v. Rhoades*, 825 F.3d 331, 339 (7th Cir. 2016) (citing *Sampson v. Murray*, 415 U.S. 61, 90 (1974)).

Plaintiff has failed to meet its burden of showing it or its members face irreparable harm between now and trial without a preliminary injunction. Plaintiff's own expert was unable to provide an opinion of what, if any, irreparable harm Plaintiff's members would suffer without a preliminary injunction. R. at 14. At most, any harm that Plaintiff's members would suffer between now and trial would be money spent on drinking water or undonated food. *Id*. Because this harm could be compensated with money damages at the end of trial, Plaintiff does not face irreparable harm. Since Plaintiff cannot use the public's harm to satisfy this *Winter* prong, Plaintiff has failed to meet its burden. The preliminary injunction should be reversed.

a. Plaintiff's arguments are unpersuasive because public harm is considered in the public interest prong, and third-party standing is no substitute.

Plaintiff and the district court argued that including public harm within the irreparable harm prong was permissible. R. at 13, 15. Their reasoning misconstrued the *Winter* prongs, Plaintiff's third-party standing, and Plaintiff's ability to use the public interest to support an injunction. All arguments are without merit.

i. The irreparable harm prong does not include public harm.

Plaintiff's argument that public harm is considered within the irreparable harm prong is incorrect. Specifically, Plaintiff cited *Courtland Co. v. Union Carbide Corp.* below to support its claim. R. at 13; No. 2:19-CV-00894, 2024 WL 4339600, at *5 (S.D.W. Va. Sept. 27, 2024) (citing *Monsanto Co. v. Geerston Seed Farms*, 561 U.S. 139, 156–57 (2010); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311–13 (1982); *Amoco Prod. Co. v. Gambell, AK*, 480 U.S. 531, 542 (1987)). However, the *Courtland Co.* court erred because none of the cases it cited actually stated that public harm could be considered under the irreparable harm prong. *Amoco Prod. Co.*, 480 U.S. at 542; *Monsanto Co.*, 561 U.S. at 156–57 ("A plaintiff must demonstrate: (1) that *it* has suffered an irreparable injury . . .") (emphasis added); *Weinberger*, 456 U.S. at 311–13 ("'even though irreparable injury may otherwise result *to the plaintiff* . . .'") (emphasis added).

At most, these cases stated public harm can be considered when analyzing the public interest—a separate prong under *Winter*. *Id*.; *Winter*, 555 U.S. at 20. Plaintiff's reliance on *Hazardous Waste Treatment Council v. South Carolina* is similarly misguided. 945 F.2d 781, 787 (4th Cir. 1991) ("[A] court considers . . . likelihood of irreparable harm *to the plaintiff* if the preliminary injunction is denied . . .") (emphasis added). While prongs may occasionally be analyzed together, any joint analysis may naturally result when the facts of a case overlap rather than because public harm is included in separate analyses. *See Winter*, 555 U.S. at 23, 24.

ii. The public interest prong considers public harm.

Public harm is considered in the public interest prong, and it is not included in the irreparable harm prong. The district court below followed the reasoning in *W. Va. Rivers Coal., Inc. v. The Chemours Co. FC, LLC*. 793 F. Supp. 3d 790, 813–16 (S.D.W. Va. 2025); R. at 15. In *W. Va. Rivers*, the court considered the consequences of a preliminary injunction under the public interest prong, but not the irreparable harm prong. *Id*. at 815 (holding the irreparable harm prong considers "pre-injunction" harm). Additionally, the court said "preliminary injunction analyses consider the public harm in a variety of ways. Sometimes . . . in the irreparable harm prong." *Id*. at 814 (citing *Courtland Co.*, 2024 WL 4339600 at *5). The district court in *W. Va. Rivers* was mistaken on both fronts.

First, the court in *W. Va. Rivers* relies on several district court decisions to support its conclusions. As mentioned above with *Courtland Co.*, *Winter* and its progeny have regularly held the opposite. *See Winter* 555 U.S. at 20; *see also Monsanto Co.*, 561 U.S. at 156–57. Second, the irreparable harm prong does not consider "pre-injunction" harm; when considering irreparable harm, *Winter* considers the harm the plaintiff would suffer *as a result* of not granting injunctive relief, not "pre-injunctive" harm. *Winter*, 555 U.S. at 20 ("[I]s likely to suffer irreparable harm *in the absence* of preliminary relief . . ") (emphasis added). Finally, in this case, the public interest prong considers the harm that Mammoth's residents would suffer without a preliminary injunction, because any harm would be a direct *consequence* of granting or denying the injunction. *See Cassell*, 990 F.3d at 545 (7th Cir. 2021) (quoting *Abott Labs v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992)) ("'the public interest, meaning the consequences of granting or denying the injunction to non-parties.'").

Public harm is appropriately considered in the public interest prong. Plaintiff cannot use public harm to satisfy its burden under *Winter*. The preliminary injunction should be reversed.

iii. Plaintiff's third-party standing does not allow it to use public harm to satisfy the irreparable harm prong.

Plaintiff's third-party standing cannot allow it to insert public harm into the irreparable harm prong. While Plaintiff may be able to "assert the interests of the general public in support of [its] claims for equitable relief," it does not follow that Plaintiff can insert that public interest to support any prong it wishes. *Sierra Club v. Morton*, 405 U.S. 727, 740 n. 15 (1972); *Netchoice v. Skrmetti*, No. 3:24-CV-01191, 2025 WL 1710228, at *9 (M.D. Tenn. June 18, 2025) ("Plaintiff does assert that it has *standing* to bring claims asserting the rights of [non-plaintiff third parties]. But that is not the same thing as asserting that Plaintiff can assert *irreparable injury* based on harms to [non-plaintiff third parties]") (emphasis in original). Plaintiff must still assert those public interests in the appropriate prong: the public interest prong. *See Winter*, 555 U.S. at 20. Accordingly, Plaintiff's third-party standing does not save it from needing to show the VEA or its member will suffer irreparable harm without injunctive relief. The preliminary injunction should be reversed.

CONCLUSION

For the reasons mentioned above, this Court should reverse the preliminary injunction granted by the district court, or alternatively, uphold the district court's stay pending a final decision from this Court. This Court should also dismiss Plaintiff's public nuisance claim for lack of standing.

Respectfully submitted,
Team 5
/s/ *Team 5*
Counsel for Appellee

CERTIFICATE OF SERVICE

Pursuant to *Official Rule* IV, *Team Members* representing Bluesky Hydrogen Enterprises certify that our *Team* emailed the brief (PDF version) to the *West Virginia University Moot Court Board* in accordance with the *Official Rules* of the National Energy Moot Court Competition at the West Virginia University College of Law. The brief was emailed before 1:00 p.m. Eastern time, February 1, 2026.

Respectfully submitted,

Team No. 5
/s/ Team 5
Counsel for Appellee